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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

MI FAMILIA VOTA, et al.

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as  
Arizona Secretary of State, et al.,

Defendants,

and

Speaker of the House Ben Toma and Senate  
President Warren Petersen,

Intervenor-Defendants.

Case No. 22-00509-PHX-SRB  
(Lead)

**CONTROVERTING STATEMENT OF  
FACTS IN SUPPORT OF NON-U.S.  
PLAINTIFFS' OPPOSITION TO  
DEFENDANTS ATTORNEY  
GENERAL KRIS MAYES AND STATE  
OF ARIZONA'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
AND INTERVENOR-DEFENDANT  
RNC'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

LIVING UNITED FOR CHANGE IN ARIZONA, et al.,

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as Arizona Secretary of State, et al.,

Defendant,

and

STATE OF ARIZONA, et al.,

Intervenor-Defendants,

and

Speaker of the House Ben Toma and Senate President Warren Petersen,

Intervenor-Defendants.

PODER LATINX, et al.,

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as Arizona Secretary of State, et al.,

Defendants,

and

Speaker of the House Ben Toma and Senate President Warren Petersen,

Intervenor-Defendants.

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ARIZONA, et al.,

Defendants,

and

Speaker of the House Ben Toma and Senate President Warren Petersen,

Intervenor-Defendants.

Consolidated Cases

No. CV-22-00519-PHX-SRB

No. CV-22-01003-PHX-SRB

No. CV-22-01124-PHX-SRB

No. CV-22-01369-PHX-SRB

No. CV-22-01381-PHX-SRB

No. CV-22-01602-PHX-SRB

No. CV-22-01901-PHX-SRB

1 DEMOCRATIC NATIONAL COMMITTEE, et al.,  
2 Plaintiffs,

3 v.

4 ADRIAN FONTES, in his official capacity as  
5 Arizona Secretary of State, et al.,

6 Defendants,

7 and

8 REPUBLICAN NATIONAL COMMITTEE,

9 Intervenor-Defendant,

10 and

11 Speaker of the House Ben Toma and Senate  
12 President Warren Petersen,

13 Intervenor-Defendants.

14 ARIZONA ASIAN AMERICAN NATIVE  
15 HAWAIIAN AND PACIFIC ISLANDER FOR  
16 EQUITY COALITION,

17 Plaintiff,

18 v.

19 ADRIAN FONTES, in his official capacity as  
20 Arizona Secretary of State, et al.,

21 Defendants,

22 and

23 Speaker of the House Ben Toma and Senate  
24 President Warren Petersen,

25 Intervenor-Defendants.

26 PROMISE ARIZONA, et al.,

27 Plaintiffs,

28 v.

ADRIAN FONTES, in his official capacity as  
Arizona Secretary of State, et al.,

Defendants,

and

Speaker of the House Ben Toma and Senate  
President Warren Petersen,

Intervenor-Defendants.

Under Local Civil Rule 56.1(b), Plaintiffs in this consolidated matter except the United States (collectively “the non-U.S. Plaintiffs”) submit the following controverting statements of fact in support of their Oppositions to Defendants’ and Intervenor Defendant’s statements of fact in support of their Motions for Partial Summary Judgment, as well as additional statements of fact that preclude summary judgment.

**I. Controverting Responses to Defendants’ and Intervenor-Defendant RNC’s Statements of Fact**

**A. Controverting Responses to Defendants State of Arizona and Attorney General Kris Mayes’ Statements of Fact**

1. On March 30, 2022, the Arizona Legislature enacted and the Governor signed House Bill 2492 into law. *See* Bill Status Inquiry: HB 2492, available at <https://apps.azleg.gov/BillStatus/BillOverview/76970> (last accessed May 4, 2023). A copy of HB 2492 is attached hereto as Exhibit A.

**Non-U.S. Plaintiffs’ Response:** Undisputed.

2. On July 6, 2022, the Arizona Legislature enacted and the Governor signed House Bill 2243 into law. *See* Bill Status Inquiry: HB 2243, available at <https://apps.azleg.gov/BillStatus/BillOverview/76698> (last accessed May 4, 2023). A copy of HB 2243 is attached hereto as Exhibit B.

**Non-U.S. Plaintiffs’ Response:** Undisputed.

3. The U.S. Election Assistance Commission created the National Voter Registration Application Form under the authority conferred by the National Voter Registration Act (“NVRA”), 52 U.S.C. § 20508.

**Non-U.S. Plaintiffs’ Response:** Undisputed.

4. A current copy of the National Voter Registration Application Form, as well as its accompanying General Instructions, Application Instructions, and State-specific Instructions, are available at

[https://www.eac.gov/sites/default/files/eac\\_assets/1/6/Federal\\_Voter\\_Registration\\_ENG.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf),

and are attached hereto as Exhibit C.

**Non-U.S. Plaintiffs' Response:** Undisputed.

5. The General Instructions explain how to submit an application—namely by submitting a completed National Voter Registration Application Form either in person or by mail:

**How to Submit Your Application**

Mail your application to the address listed under your State in the State Instructions. Or, deliver the application in person to your local voter registration office. The States that are required to accept the national form will accept copies of the application printed from the computer image on regular paper stock, signed by the applicant, and mailed in an envelope with the correct postage.

*See* Exhibit C at 2.

**Non-U.S. Plaintiffs' Response:** Undisputed.

6. A copy of the Arizona Voter Registration Form and its instructions can be accessed at [https://azsos.gov/sites/default/files/voter\\_registration\\_form.pdf](https://azsos.gov/sites/default/files/voter_registration_form.pdf) and is attached hereto as Exhibit D.

**Non-U.S. Plaintiffs' Response:** Disputed. The cited and attached Form is the version that was operative between April 2019 and September 2022. *See* Defs.' Ex. D, Doc. 365-1 at 53 (noting revision in April 2019); **Declaration of Nicole Hansen, Ex. 9** (attaching September 2022 revised Form) (available at [https://azsos.gov/sites/default/files/voter\\_registration\\_form\\_092222-standard.pdf](https://azsos.gov/sites/default/files/voter_registration_form_092222-standard.pdf)).

7. Since 2003, Arizona has placed a check box to affirm U.S. citizenship on the Arizona Voter Registration Form. *See* 2003 Ariz. Legis. Serv. Ch. 260 (S.B. 1075) (West) (revising A.R.S. § 16-152(A)(14)), attached hereto as Exhibit E.

**Non-U.S. Plaintiffs' Response:** Undisputed.

8. In 2004, Arizona law specified that checking the box to affirm an applicant's U.S. citizenship was a condition for being "presumed to be properly registered." *See* 2004 Ariz. Legis. Serv. Ch. 184 (S.B. 1250) (West) (revising A.R.S. § 16-121.01(A)), attached hereto as Exhibit F.

**Non-U.S. Plaintiffs' Response:** Undisputed that the prior version of A.R.S. § 16-

1 121.01(A) stated in part that “[a] person is presumed to be properly registered to vote on  
 2 completion of a registration form as prescribed by section 16–152 that contains at least the  
 3 name, the residence address or the location, the date of birth and the signature or other  
 4 statement of the registrant ... and a checkmark or other appropriate indicator that the person  
 5 answered ‘yes’ to the question regarding citizenship.” Defs.’ Ex. F, Doc. 365-1 at 73.

6 9. Since 1979, Arizona’s voter registration form has contained a space for prospective  
 7 voters to write their “state or country of birth.” *See* 1979 Ariz. Sess. Laws Ch. 209, at 823  
 8 (codified then at A.R.S. § 16-152(A)(9)), attached hereto as Exhibit G.

9 **Non-U.S. Plaintiffs’ Response:** Undisputed.

10 10. A copy of the U.S. Department of State’s Foreign Affairs Manual is available at  
 11 <https://fam.state.gov/fam/08fam/08fam040304.html> (last updated Apr. 19, 2022), and is  
 12 attached hereto as Exhibit H.

13 **Non-U.S. Plaintiffs’ Response:** Undisputed.

14 11. The U.S. Department of State’s Foreign Affairs Manual states: “[T]he United States  
 15 will not issue a U.S. passport with non POB [Place of Birth] listing. The POB designation is  
 16 an integral part of establishing an individual’s identity. It distinguishes that individual from  
 17 other persons with similar names and/or dates of birth, and helps identify claimants attempting  
 18 to use another person’s identity.” Exhibit H at 8 FAM 403.4-6(A).

19 **Non-U.S. Plaintiffs’ Response:** Undisputed.

20 12. The following states have a space on their voter registration applications for place of  
 21 birth: Alabama, Louisiana, Missouri, Nebraska, Nevada, North Carolina, Tennessee, Utah, and  
 22 Vermont. The voter registration applications for these states are attached hereto in alphabetical  
 23 order as Exhibit I.

24 **Non-U.S. Plaintiffs’ Response:** Undisputed.

25 13. The following states appear to require an applicant state place of birth in order to be  
 26 registered: Alabama (see form itself in Exhibit I), Nevada (see form itself in Exhibit I),  
 27 Tennessee (Tenn. Code Ann. § 2-2-116), and Vermont (17 V.S.A. § 2145).

**Non-U.S. Plaintiffs' Response:** Disputed that any of these states require place of birth in order to be registered. *See infra* Section II. Non-U.S. Plaintiffs' Statements of Additional Facts Pursuant to L. Civ. R. 56.1 at ¶ 10.

14. On December 30, 2022, Kori Lorick from the Secretary of State's office sent an email containing a chart explaining documents that could constitute proof of location of residence. A copy of that chart is attached hereto as Exhibit J.

**Non-U.S. Plaintiffs' Response:** Undisputed that the chart attached in Defendants' Exhibit J contains documents that the Secretary indicates would be accepted as sufficient proof of location of residence to satisfy the challenged H.B. 2492 documentary proof of location of residence requirement. Disputed to the extent that Defendants suggest that the documents listed in the chart provide an exhaustive list of sufficient proof of location of residence.

15. The Secretary's chart recognizes that tribal members may demonstrate proof of residence through a tribal identification card without a traditional street address, consistent with a stipulation regarding tribal documentation in *Gonzalez v. Arizona*, No. CV 06-1268-PHX-ROS, Doc. 749 (D. Ariz. April 18, 2008). *See* Exhibit J, identified above.

**Non-U.S. Plaintiffs' Response:** Undisputed that the Secretary's chart indicates that tribal members may demonstrate proof of location of residence through a tribal identification card without a traditional street address, consistent with the *Gonzalez v. Arizona* stipulation. *See* No. CV 06-1268-PHX-ROS, Doc. 749 (D. Ariz. April 18, 2008). Disputed to the extent that Defendants suggest that other types of tribal identification would be insufficient to satisfy the challenged H.B. 2492 documentary proof of location of residence requirement.

## **B. Controverting Responses to Intervenor-Defendant Republican National Committee's Statements of Fact**

1. The Arizona Legislature passed House Bill 2492, and the Governor signed it into law on March 30, 2022. A copy is attached as Exhibit A.

**Non-U.S. Plaintiffs' Response:** Undisputed.



2. The Arizona Legislature passed House Bill 2243, and the Governor signed it into law on July 6, 2022. A copy is attached as Exhibit B.

**Non-U.S. Plaintiffs' Response:** Undisputed.

3. The U.S. Election Assistance Commission issues a federal form for voter registration. That form and the accompanying registration is attached as Exhibit C.

**Non-U.S. Plaintiffs' Response:** Undisputed.

## **II. Non-U.S. Plaintiffs' Statements of Additional Facts Pursuant to L. Civ. R. 56.1**

1. A copy of the current Arizona State Voter Registration Form and its instructions, as revised September 2022, can be accessed at [https://azsos.gov/sites/default/files/voter\\_registration\\_form\\_092222-standard.pdf](https://azsos.gov/sites/default/files/voter_registration_form_092222-standard.pdf) and is attached at **Hansen Decl., Ex. 9**.

2. The National Mail Voter Registration Form as promulgated by the U.S. Election Assistance Commission includes its Voter Registration Application, General Instructions, Application Instructions, and State Instructions. See Defs.' Ex. C, Doc. 365-1 at 23-49.

3. A copy of the reporter's transcript of proceedings for the scheduling conference held in this consolidated case on March 23, 2023 is attached to **Declaration of Hayden Johnson, Ex. 31**.<sup>1</sup> At the March 23, 2023 scheduling conference in this case, this Court set a schedule for to allow for early summary judgment motions prior to the close of discovery on "discrete legal issues" that do not require a complete factual record. *Id.* at 41.

4. The Arizona Secretary of State, the State's Chief Election Official, has admitted that "the Checkmark Requirement is immaterial to an applicant's eligibility to vote where the applicant has otherwise attested to their U.S. citizenship under penalty of perjury or provide DPOC under Arizona law." See Secretary of State's Answer to LUCHA Plaintiffs' First Am.

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<sup>1</sup> The numbering for the exhibits in the Declaration of Hayden Johnson is a continuation of the numbering of the exhibits from the Declaration of Nicole Hansen, which is also attached to LUCHA Plaintiffs' filing.

1 Compl., Doc. 124 ¶¶ 66-67; *see also id.* ¶ 197 (admitting that the Checkmark Requirement  
2 does not serve any rational state interest).

3 5. The Secretary also advised counties in a memo that “if an applicant provides DPOC, or  
4 DPOC can be acquired based on the provided information, the county recorder should accept  
5 the form. The checkbox is immaterial and violates the CRA, by denying the right to register  
6 to vote to eligible Arizonans who accidentally omit the checkmark from their voter registration  
7 application.” **Hansen Decl., Ex. 16** (AZSOS-000012).

8 6. Plaintiffs have issued discovery requests to the Secretary and County Recorders  
9 regarding whether, at least where election officials have in their possession sufficient evidence  
10 of citizenship for a voter, the citizenship checkmark is immaterial and adds nothing to election  
11 officials’ assessment of the voter’s identity or eligibility requirements. Responses to these  
12 discovery requests are due June 16, 2023, and June 29, 2023, respectively. *See, e.g., Johnson*  
13 **Decl., Ex. 32** at 6 (Interrogatories to Secretary Fontes); **Johnson Decl., Ex. 33** at 9 (RFPs to  
14 Secretary Fontes); **Johnson Decl., Ex. 34** at 7-8 (Interrogatories to County Recorders);  
15 **Johnson Decl., Ex. 35** at 9-10 (RFPs to County Recorders).

16 7. The Secretary concedes that place of birth is not material to assessing any voter  
17 qualification, admitting Plaintiffs’ allegation that “[a] voter’s birthplace is wholly immaterial  
18 to their qualifications to vote” and “[a] person’s place of birth has no bearing whether they are  
19 eighteen, currently a citizen of the United States, or a resident of Arizona and the specific  
20 jurisdiction in which they are registering.” Secretary of State Answer to LUCHA Plaintiffs’  
21 First Am. Compl., Doc. 124 ¶ 56; LUCHA Plaintiffs’ First Am. Compl., Doc. 67 ¶ 56.

22 8. Plaintiffs have issued discovery requests to the Secretary and County Recorders  
23 regarding whether, to what extent, and for what purposes Arizona election officials use place  
24 of birth information for any voter registration, voter eligibility, or voter identification purpose.  
25 Responses to these discovery requests are due June 16, 2023, and June 29, 2023, respectively.  
26 *See, e.g., Johnson Decl., Ex. 32* at 6 (Interrogatories to Secretary Fontes); **Johnson Decl., Ex.**  
27  
28

1 **33** at 9 (RFPs to Secretary Fontes); **Johnson Decl., Ex. 34** at 7-8 (Interrogatories to County  
2 Recorders); **Johnson Decl., Ex. 35** at 9-10 (RFPs to County Recorders).

3 9. In Louisiana, the instructions for the voter registration application form explicitly states  
4 that the place of birth prompt, like the inquiries for sex and race, are used “for statistical  
5 purposes only.” Defs.’ Ex. I, Doc. 365-1 at 140.

6 10. Other states—such as Missouri, Nebraska, and North Carolina—clarify on the voter  
7 registration application form, appended instructions, or in further online materials that a voter  
8 listing place of birth is not required to submit a complete registration form. Defs.’ Ex. I, Doc.  
9 365-1 at 143-44, 149; **Johnson Decl., Ex. 36** (Nebraska Secretary of State, Voter Registration  
10 Portal, “DEMO Page 5 – SOS Online Voter Registration”,  
11 <https://www.nebraska.gov/demo/sos-voter-reg/five.html> (last accessed May 31, 2023)).

12 11. It does not appear that Alabama, Nevada, Vermont, or Tennessee require place of birth  
13 for voter registration or reject voter registration applications for omission of place of birth.

14 The Alabama and Nevada forms Defendants cite do not provide that prospective voters  
15 must submit place of birth information to be registered. *See* Defs.’ Ex. I, Doc. 365-1 at 137,  
16 147. The information is not otherwise required for registration in Alabama or Nevada law.  
17 Alabama law expressly provides that “no applicant shall be required to answer any question,  
18 written or oral, not related to his or her qualifications to register.” Ala. Code § 17-3-52; *see*  
19 *also id.* § 17-3-54 (stating that an application “may be refused registration” only if the  
20 applicant “fails to establish by evidence ... that he or she is qualified to register”). Alabama’s  
21 list of voter qualifications does not include birthplace disclosure. *Id.* § 17-3-30 (describing  
22 voter qualifications); Ala. Const. art. VIII, § 177 (same). Nevada is similar on this issue. Nev.  
23 Const. art. II, § 1 (describing voter qualifications); Nev. Rev. Stat. § 293.485 (same). Nevada  
24 law does not require that its state voter registration form include a space for birthplace. Nev.  
25 Rev. Stat. §§ 293.507(4), 293.5235(12). For prospective Nevada voters who apply for  
26 registration at the Nevada Department of Motor Vehicles, the applicants’ place of birth is not  
27 one of the categories of information required to be transmitted to the county clerk to process  
28

1 the registration, further indicating that birthplace is immaterial to registration. *Id.* §§ 293.5742,  
2 293.57688.

3 For Vermont and Tennessee, the statutes Defendants cite do not require that voters  
4 provide their place of birth as a condition for registering to vote; the statutes only provide that  
5 the state registration forms must contain the birthplace field. *See* Tenn. Code Ann. § 2-2-116  
6 (providing a template form and stating that the form “shall contain all the information required  
7 before being signed by the registrant” but not dictating that all information on the template  
8 form is “required”); 17 V.S.A. § 2145. The election codes in Tennessee and Vermont also do  
9 not elsewhere require affirming place of birth as a condition to register to vote. *See, e.g.*, 17  
10 V.S.A. § 2121 (listing eligibility requirements); Tenn. Code Ann. §§ 2-2-102, 2-2-104  
11 (similar). And prospective Vermont voters registering using the online application are not  
12 required to input place of birth, which is listed as an optional field on the online application  
13 form. *See Johnson Decl., Ex. 37* (Vermont Secretary of State, Online Voter Registration  
14 System, <https://olvr.vermont.gov/Registration/RegistrationDetails> (last accessed May 31,  
15 2023)). Tennessee similarly appears to not mandate rejecting an online application if a  
16 prospective voter fails to input place of birth, stating that a voter can register online by  
17 inputting their state-issued identification number. *See, e.g., Johnson Decl., Ex. 38* (Tennessee  
18 Secretary of State, Frequently Asked Questions for this Division, “What will I need to register  
19 to vote online?”, <https://sos.tn.gov/elections/faqs?page=1> (last accessed May 31, 2023)). For  
20 both Tennessee and Vermont, the state mail-in voter registration forms prompt voters to input  
21 their telephone number just like the prompt for place of birth, but it appears that in neither case  
22 will a registration be rejected if a voter omits answering the field. *See, e.g., Defs.’ Ex. I, Doc.*  
23 *365-1 at 152, 157.* Moreover, none of these states impose a bifurcated registration system like  
24 Arizona; in each, voters may register for *all* elections with the Federal Form, which does *not*  
25 require birthplace. *See, e.g., Ala. Code § 17-4-60(c); 17 V.S.A. § 2145(a).*

26 12. As of this filing, no depositions have taken place in this consolidated matter. *See*  
27 *Johnson Decl. ¶ 11.* Plaintiffs expect to depose representative(s) of the Secretary of State and  
28

Attorney General, Intervenor-Defendants, county recorders, and knowledgeable third parties. *Id.* These depositions will enable Plaintiffs to further establish the facts concerning lack of materiality of the Checkmark Requirement and Birthplace Requirement. *Id.* These depositions will also enable Plaintiffs to further establish that Defendants' asserted rationale(s) for these requirements lack a factual basis. *Id.*

13. The Secretary has admitted that certain of the databases listed in H.B. 2492 and H.B. 2243 may include potentially outdated and unreliable information. *See* Secretary of State's Answer to Poder Latinx Plaintiffs' Second Am. Compl., Doc. 189 ¶ 51.

14. The Secretary has admitted that the SAVE system is not a universal or exhaustive list of U.S. citizens and may contain outdated or inaccurate data on citizenship status. *See* Secretary of State's Answer to Poder Latinx Plaintiffs' Second Am. Compl., Doc. 189 ¶ 52.

15. The Secretary has admitted that some United States citizens may be erroneously identified as non-citizens based on potentially outdated and inaccurate information. *See* Secretary of State's Answer to Poder Latinx Plaintiffs' Second Am. Compl., Doc. 189 ¶ 91.

16. The SAVE system contains information only about immigrants. **Johnson Decl., Ex. 39** (U.S. Citizenship and Immigration Services, About SAVE, <https://www.uscis.gov/save/about-save/about-save> (last accessed June 2, 2023)).

Respectfully submitted June 5, 2023:

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**CERTIFICATE OF SERVICE**

On this 5th day of June, 2023, I caused the foregoing to be filed and served electronically via the Court's CM/ECF system upon counsel of record.

/s/ Danielle Lang

Danielle Lang